

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Hawaii Carpenters Trust Funds,)
et al.,)
)
 Plaintiffs,)
)
 vs.) Civ. No. 11-00064 ACK-BMK
)
Commercial Finish, Inc., et al.,)
)
 Defendants.)
)
)

ORDER ADOPTING AS MODIFIED THE MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATION TO ENTER DEFAULT JUDGMENT AND AWARD DAMAGES
AGAINST DEFENDANT COMMERCIAL FINISH, INC.

On September 12, 2011, Magistrate Judge Kurren issued his Findings and Recommendation to Enter Default Judgment and Award Damages against Defendant Commercial Finish, Inc. (ECF No. 24.) No objections to the F&R have been filed by any party.

The Court rejected a previous F&R to Enter Default Judgment in this case because, in part, that F&R "presuppose[d] that Plaintiffs [were] entitled to damages for unpaid contributions, even though the complaint contains no allegation that there are any delinquent contributions." (ECF No. 14 at 2.) Plaintiffs have not submitted an amended complaint alleging that there are delinquent contributions. But they have submitted a supplemental declaration from Paul Marx, the CEO of Hawaii Benefits Administrators, stating that the Plaintiff funds

obtained payroll records and conducted an audit, and that the amount of contributions "now due and owing from Commercial Finish to the Trust Funds" is \$1,344.67. (ECF No. 21.) The F&R contains an award for that amount. The Court finds that the Marx declaration is sufficient to repair the deficiency in the complaint and establish Plaintiffs' entitlement to a default judgment awarding damages for unpaid contributions.^{1/}

Yet the Court does not adopt the instant F&R in its entirety. The F&R that the Court rejected included an award of \$1,933.40 in attorneys' fees. (ECF No. 13 at 10.) In rejecting that F&R, the Court stated that "because the Court's rejection of the F&R is traceable to inadequacies in the Proposed F&R, which was prepared by Plaintiffs' counsel, no additional costs or attorneys' fees concerning the motion for entry of default judgment shall be awarded to Plaintiffs." (ECF No. 14 at 2.) The instant F&R nonetheless contains an award of \$2,050.40. The Court rejects the F&R to the extent that it contains an increased award for attorneys' fees or costs.

Pursuant to Title 28, United States Code, Section 636(b)(1)(C) and Local Rule 74.2, The Court ADOPTS the "Findings and Recommendation To Enter Default Judgment And Award Damages Against Defendant Commercial Finish, Inc." that was filed on

^{1/} The Court also finds that the other deficiencies identified in the order rejecting the previous F&R have been remedied.

September 12, 2011, except that the award of attorneys' fees is
REDUCED to \$1,933.40.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, October 31, 2011.



Alan C. Kay

Alan C. Kay
Sr. United States District Judge

Hawaii Carpenters Trust Funds v. Commercial Finish, Inc., Civ. No. 11-00063
ACK-BMK: Order Adopting as Modified the Magistrate Judge's Findings and
Recommendation to Enter Default Judgment and Award Damages Against Defendant
Commercial Finish, Inc.